

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JAMES NICHOLAS CANTLEY,

Plaintiff,

v.

Civil Action No. 5:06CV3
(STAMP)

WEST VIRGINIA REGIONAL JAIL AUTHORITY,
STEVEN CANTERBERRY and JOHN KING,

Defendants.

MEMORANDUM OPINION AND ORDER
ADOPTING AND AFFIRMING THE REPORT AND RECOMMENDATION

On June 27, 2005, pro se plaintiff, James Nicholas Cantley, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed Without Prepayment of Fees. On December 23, 2005, this case was transferred from the Southern District of West Virginia to this Court because the plaintiff challenges the conditions of his confinement at the Potomac Highlands Regional Jail. On January 12, 2006, the Clerk of this Court mailed to the plaintiff a notice to complete the consent for collection of fees from his prisoner trust account report. In the notice, plaintiff was advised to file the missing form within thirty (30) days from the file date of the notice.

On April 13, 2006, United State Magistrate Judge John S. Kaull entered a memorandum opinion and report and recommendation that this case be dismissed without prejudice. Specifically, Magistrate Judge Kaull stated that his review of the file from the Southern District of West Virginia revealed that the plaintiff had not filed

the necessary form for his Application to Proceed Without Prepayment of Fees. Further, the plaintiff had not requested an extension of time to do so.

On April 20, 2006, the magistrate judge's memorandum opinion and report and recommendation that had been mailed to the plaintiff in this civil action was returned to sender with a note indicating that the plaintiff was no longer at the Potomac Highlands Regional Jail as he had indicated. This Court has no affirmative obligation to locate the plaintiff. "A party, not the district court, bears the burden of keeping the court apprised of any changes in his mailing address." Carey v. King, 856 F.2d 1439, 1441 (9th Cir. 1988)(per curiam opinion). If this Court were to order the plaintiff to show cause why dismissal was not warranted, the order "would only find itself making a round trip tour through the United States mail." Id. Moreover, this Court is not required to hold the matter in abeyance. The plaintiff has clearly been notified through the notice to complete the consent for collection of fees and prisoner trust account report that he had thirty days from filing of the notice to file the necessary forms to complete his application.

Because the plaintiff has not notified this Court of his current address, because more than sufficient time has elapsed for him to submit his change of address, and because the plaintiff has failed to file his missing forms to accompany his Application to

Proceed Without Prepayment of Fees, this action is hereby DISMISSED
WITHOUT PREJUDICE.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum
opinion and order to the pro se plaintiff and to counsel of record
herein.

DATED: May 9, 2006

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE